

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KWAINE THOMPSON,

Plaintiff,

-against-

CAPTAIN LEMON, GRVC, *et al.*,

Defendants.

23-CV-2102 (LTS)

ORDER TO AMEND

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated at Collins Correctional Facility, brings this *pro se* action alleging that, while he was detained at the George R. Vierno Center (“GRVC”) and West Facility on Rikers Island, Defendants violated his federal constitutional rights and his rights under state and city laws. By order dated February 28, 2024, the Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees.¹ For the reasons set forth below, the Court grants Plaintiff leave to file an amended complaint within 60 days of the date of this order.

STANDARD OF REVIEW

The Prison Litigation Reform Act requires that federal courts screen complaints brought by prisoners who seek relief against a governmental entity or an officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). The Court must dismiss a prisoner’s IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

(2d Cir. 2007). The Court must also dismiss a complaint if the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3).*

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

BACKGROUND

In his 90-page complaint, typed in all capital letters, Plaintiff seeks to set forth a series of constitutional violations which he alleges occurred in January and February 2023, while he was detained in GRVC and the West Facility on Rikers Island. Plaintiff attached to his complaint 232 pages of exhibits, presumably in support of his allegations. He sues the City of New York, the New York City Department of Correction (“DOC”) Commissioner Luis Molina, wardens, deputy wardens, captains, and numerous correction officers, both named and unknown. In addition to the constitutional claims Plaintiff appears to assert with respect to his own confinement, it appears that Plaintiff seeks to also assert claims on behalf of other detainees, namely Ricky Torres, Christopher Cano, and Alexander Williams. (ECF No. 1 at 7, 16.) Plaintiff seeks money damages and injunctive and declaratory relief.

Plaintiff is not a stranger to this court. In addition to two actions he filed in the United States District Court for the Eastern District of New York, *see Thompson v. City of New York*, No. 15-CV-3526 (MKB) (E.D.N.Y. Nov. 3, 2015); *Thompson v. NYPD*, No. 15-CV-3400 (MKB)

(E.D.N.Y. Nov. 3, 2015), which were transferred to this court,² Plaintiff has filed nine other actions in this court, *see also Thompson v. Quilty*, ECF 1:23-CV-3170, 4 (S.D.N.Y. July 17, 2023) (dismissing action for Plaintiff's failure to pay the filing fees or submit a request to proceed IFP and a prisoner authorization); *Thompson v. Quilty*, ECF 1:22-CV-7222, 13 (S.D.N.Y. Sept. 5, 2023) (dismissing action for failure to state a claim, for seeking monetary damages from Defendants who are immune from such relief, and as frivolous); *Thompson v. City of New York*, ECF 1:22-CV-1458, 1 (S.D.N.Y. filed Feb. 22, 2022; pending); *Thompson v. City of New York*, ECF 1:21-CV-10371, 2 (S.D.N.Y. filed Dec. 6, 2021; pending); *Thompson v. City of New York*, ECF 1:14-CV-0512, 21 (S.D.N.Y. Oct. 17, 2014) (settled); *Thompson v. Manhattan Detention Ctr.*, ECF 1:11-CV-5853, 5 (S.D.N.Y. Jan. 3, 2012) (dismissing action for failure to state a claim); *Thompson v. Doe*, ECF 1:10-CV-3268, 3 (May 27, 2010) (dismissing action for Plaintiff's failure to pay the filing fees or submit a request to proceed IFP and a prisoner authorization).

DISCUSSION

A. Pleading Deficiencies

1. Claims on Behalf of Others

As a nonlawyer Plaintiff can represent his own interests only; he may not assert claims on behalf of other detainees. *See* 28 U.S.C. § 1654; *U.S. ex rel. Mergent Servs. v. Flaherty*, 540 F.3d 89, 92 (2d Cir. 2008) (“[A]n individual who is not licensed as an attorney may not appear on another person’s behalf in the other’s cause.” (internal quotation marks and citation omitted));

² Plaintiff's action against the NYPD was dismissed in this Court as duplicative of his action against the City of New York, *see Thompson v. NYPD*, ECF 1:15-CV-8669, 9 (S.D.N.Y. Nov. 4, 2015), and Plaintiff's action against the City of New York was dismissed for failure to prosecute, *see Thompson v. City of New York*, ECF 1:15-CV-8667, 10 (S.D.N.Y. Feb. 8, 2016).

Eagle Assocs. v. Bank of Montreal, 926 F.2d 1305, 1308 (2d Cir. 1991) (noting that Section 1654 “allow[s] two types of representation: ‘that by an attorney admitted to the practice of law by a governmental regulatory body, and that by a person representing himself’”).

The Court therefore dismisses any claims Plaintiff may be seeking to assert on behalf of other detainees without prejudice to those individuals pursuing those claims on their own behalf. If Plaintiff files an amended complaint, he may assert claims only on his own behalf; he may not bring claims on behalf of any other person.

2. Rule 8 of the Federal Rules of Civil Procedure

Although *pro se* litigants enjoy the Court’s “special solicitude,” *Ruotolo v. I.R.S.*, 28 F.3d 6, 8 (2d Cir. 1994) (per curiam), their pleadings must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief. A complaint states a claim for relief if the claim is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In reviewing a complaint for plausibility, the Court accepts all well-pleaded factual allegations as true and draws all reasonable inferences in the pleader’s favor. *Id.* (citing *Twombly*, 550 U.S. at 555). But the Court need not accept “[t]hreadbare recitals of the elements of a cause of action,” which are essentially legal conclusions. *Id.* at 678 (citing *Twombly*, 550 U.S. at 555).

As set forth in *Iqbal*:

[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

Id. (internal citations, quotation marks, and alteration omitted). After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

While a complaint’s statement of claim must contain sufficient factual detail, it should not be “prolix” (*i.e.*, lengthy) or contain unnecessary details. *See Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988) (noting that under Rule 8(a)(2), the statement of claim “should be short because ‘[u]nnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage’” (citation omitted)); *Prezzi v. Schelter*, 469 F.2d 691, 692 (2d Cir. 1972) (holding that complaint did not comply with Rule 8 because “it contained a labyrinthian prolixity of unrelated and vituperative charges that defied comprehension”); *see also Annuity, Welfare & Apprenticeship Skill Improvement & Safety Funds of the Int’l Union of Operating Eng’rs Loc. 15, 15A, 15C & 15D, AFL-CIO v. Tightseal Constr. Inc.*, No. 17-CV-3670 (KPF), 2018 WL 3910827, at *12 (S.D.N.Y. Aug. 14, 2018) (“[C]ourts in this Circuit have dismissed complaints that are unnecessarily long-winded, unclear, or conclusory.”)

In addition to Plaintiff’s complaint being lengthy and containing seemingly unnecessary details, Plaintiff’s complaint is typed in all capital letters, thereby negatively affecting the complaint’s readability. *See Guterman v. Costco Wholesale Corp.*, 341 F.Supp.3d 468, 472 n.3 (S.D.N.Y. Sept. 24, 2018) (“Occasional phrases in the coupon booklets are in all capital letters or italicized. . . . For ease of readability, the Court reproduces these phrases in unitalicized, lower case letters.”); *McIntosh v. United States*, No. 15-CV-2442 (KMK), 2018 WL 1275119, at *1 n. 3 (S.D.N.Y. Mar. 7, 2018) (“Occasional words and phrases in Plaintiff’s Complaint are written in

all capital letters. Here and elsewhere, when quoting such words [and] phrases, this Opinion reverts to conventional capitalization for ease of readability.”)

If Plaintiff submits an amended complaint, it must comply with Rule 8’s requirement that it contain a short and plain statement showing that Plaintiff is entitled to relief. Plaintiff should avoid writing or typing using all capital letters, and he should also avoid presenting unrelated or extraneous allegations and including voluminous attachments or exhibits. Plaintiff is not required to submit evidence in support of his claims at this stage in the litigation.

3. Improper Joinder

Rules 18 and 20 of the Federal Rules of Civil Procedure govern joinder of claims and parties, respectively. Rule 18(a) permits a plaintiff to join as many claims as he has against a particular defendant. *See Fed. R. Civ. P. 18(a)*. By contrast, under Rule 20, a plaintiff may not pursue unrelated claims against multiple defendants. *See Fed. R. Civ. P. 20(a)(2); Deskovic v. City of Peekskill*, 673 F. Supp. 2d 154, 167 (S.D.N.Y. 2009) (holding that “the mere allegation that Plaintiff was injured by all Defendants is not sufficient [by itself] to join unrelated parties as defendants in the same lawsuit pursuant to Rule 20(a)” (internal quotation marks and citation omitted, alteration in original)). Rule 21 of the Federal Rules of Civil Procedure provides that “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.” Fed. R. Civ. P. 21.

Here, it appears that Plaintiff is attempting to assert unrelated claims against multiple different defendants regarding events that occurred at two different facilities on Rikers Island. The Court grants Plaintiff leave to file an amended complaint concerning the related claims he details in his current complaint. If he wishes to pursue unrelated claims against multiple different defendants regarding events that occurred at different facilities, he must bring those claims in

separate actions. In his amended complaint and any separate actions, the Court cautions Plaintiff not to reassert claims raised in his pending cases.

LEAVE TO AMEND

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts “should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). Because Plaintiff may be able to allege related claims against multiple defendants regarding events that occurred at one facility on Rikers Island, the Court grants Plaintiff 60 days’ leave to amend his complaint to detail those claims. Plaintiff must, however, assert unrelated claims in separate actions, and he may not assert claims raised in his pending cases.

Plaintiff must name as the defendant(s) in the caption³ and in the statement of claim those individuals who were allegedly involved in the deprivation of his federal rights. If Plaintiff does not know the name of a defendant, he may refer to that individual as “John Doe” or “Jane Doe” in both the caption and the body of the amended complaint.⁴ The naming of John Doe

³ The caption is located on the front page of the complaint. Each individual defendant must be named in the caption. Plaintiff may attach additional pages if there is not enough space to list all of the defendants in the caption. If Plaintiff needs to attach an additional page to list all defendants, he should write “see attached list” on the first page of the Amended Complaint. Any defendants named in the caption must also be discussed in Plaintiff’s statement of claim.

⁴ For example, a defendant may be identified as: “Correction Officer John Doe #1 on duty August 31, 2022, at West Facility, during the 7-3 p.m. shift.”

defendants, however, does *not* toll the three-year statute of limitations period governing this action and Plaintiff is responsible for ascertaining the true identity of any “John Doe” defendants and amending his complaint to include the identity of any “John Doe” defendants before the statute of limitations period expires. Should Plaintiff seek to add a new claim or party after the statute of limitations period has expired, he must meet the requirements of Rule 15(c) of the Federal Rules of Civil Procedure.

In the “Statement of Claim” section of the amended complaint form, Plaintiff must provide a short and plain statement of the relevant facts supporting each claim against each defendant. If Plaintiff has an address for any named defendant, Plaintiff must provide it. Plaintiff should include all of the information in the amended complaint that Plaintiff wants the Court to consider in deciding whether the amended complaint states a claim for relief. That information should include:

- a) the names and titles of all relevant people;
- b) a description of all relevant events, including what each defendant did or failed to do, the approximate date and time of each event, and the general location where each event occurred;
- c) a description of the injuries Plaintiff suffered; and
- d) the relief Plaintiff seeks, such as money damages, injunctive relief, or declaratory relief.

Essentially, Plaintiff’s amended complaint should tell the Court: who violated his federally protected rights and how; when and where such violations occurred; and why Plaintiff is entitled to relief.

Because Plaintiff’s amended complaint will completely replace, not supplement, the original complaint, any facts or claims that Plaintiff wants to include from the original complaint must be repeated in the amended complaint.

CONCLUSION

Plaintiff is granted leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within 60 days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 23-CV-2102 (LTS). An Amended Civil Rights Complaint form is attached to this order. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the complaint will be dismissed for failure to comply with this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: April 29, 2024
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV

(Include case number if one has been
assigned)

-against-

**AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the
names of all of the defendants in the space provided, please
write "see attached" in the space above and attach an
additional sheet of paper with the full list of names. The
names listed above must be identical to those contained in
Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed
with the court should therefore *not* contain: an individual's full social security number or full
birth date; the full name of a person known to be a minor; or a complete financial account
number. A filing may include *only*: the last four digits of a social security number; the year of
an individual's birth; a minor's initials; and the last four digits of a financial account number.
See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a *"Bivens"* action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence:

Date(s) of occurrence:

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____